IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Pradeep Vs. Smt. Priyanka & Anr.
S.B. CR. REVISION PETITION NO.319/2006

Against order dated 09.03.2006 passed by Judicial Magistrate 1st Class, Rajgarh, District Churu in Criminal Misc. Case No.78/2004 (Priyanka & Anr. Vs. Pradeep).

DATE OF ORDER :: 21st November, 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. V.S. Choudhary for petitioner.
Mr. Ramesh Guleria for respondents.

BY THE COURT:

By filing the present revision petition under Sec.307/401 Cr.P.C., the petitioner husband challenges the order of maintenance passed vide order dated 09.03.2006 by the learned Judicial Magistrate, 1st Class, Rajgarh, in Criminal Misc. Case No.78/2004 (Priyanka & Anr. Vs. Pradeep), whereby interim maintenance of Rs.2,000/- to the wife and Rs.1,000 to daughter, in total Rs.3,000/- per month have been awarded while deciding the application

moved by respondent wife Smt. Priyanka for maintenance of herself and minor daughter Priya.

In the application under Sec.125, the wife Priyanka stated that she was married with non-applicant petitioner Pradeep on 22.06.2003 as per Hindu traditions and customs and thereafter out of the wedlock daughter priya was born. It was averred that at the time of marriage, her father gave lot of articles in dowry but the husband and his family members were not satisfied and taunted her for not bringing motorcycle in dowry. They asked her to bring Indica car and tortured her mentally and physically for want of more dowry. Her family members & others on 20.02.2004 persuaded her husband and the in-laws but they after beating, left her at the bus stand and after that she is living at her parental house alongwith her daughter. It is alleged that the in-laws even denied to return the dowry articles. For the grant of maintenance she has taken the stand that she is from rural background and has no source of income to maintain herself and the daughter who have been left by the husband without any reasonable cause and the husband is escaping from his

liability. It is said that the annual income of her husband, who is dealing in grains, is about Rs.1 lac per annum. She claimed maintenance of Rs.5,000/- per month to meet out the daily needs of life. In reply, the husband accepted his marriage with Priyanka and a daughter out of the wedlock but denied any taunting, harassment or humiliation of the wife at his hand. He also denied making demand of an Indica Car. He came out with the case that Priyanka was having illicit relation with her brother-in-law and that having come to his knowledge she threatened her of committing suicide and involving him falsely. He alleged that the family members of Priyanka came to his house and after creating a scene there took her away with them forcefully. He stated that he is ready to live with the wife and made efforts for that but she said that she would not live with him unless he resides with her at Pilani. According to him, Priyanka knows sewing and is a literate lady, who earns from sewing and tuition a sum of Rs.5,000/- per month whereas he is a student of LL.B., and is dependent on the family members, therefore, the wife, who is staying at her parental house intentionally, is not entitled to any maintenance allowance. He denied having any agricultural

land of his own and stated that the silver and and gold ornaments given by his family members in the marriage are with the wife. He prayed for dismissal of the application for grant of maintenance allowance.

In order to prove her case, wife examined herself as AW1 and other witnesses AW2 Chandra Bhan and AW3 Ransingh. She also exhibited 5 documents. Against this, the non-applicant petitioner himself appeared as NAW1 and got examined witnesses NAW2 Manphool, NAW3 Vidhyanand and NAW Balveer but did not submit any document. The learned trial Court after hearing the parties, framed issues and decided the application as aforesaid.

The contention of the learned counsel for the petitioner is that in the instant case, the learned trial Court has not given any finding in relation to the income of the petitioner, therefore, the order suffers from legal infirmity. It has also been submitted that the trial Court has committed severe illegality in awarding interim maintenance to respondents Smt. Priyanka and Priya Rs.2000/- and 1,000/- respectively, who are wife and daughter of the

petitioner. It is submitted that at the time of marriage the petitioner was a student and he does not have a permanent source of income, therefore, the trial Court committed severe illegality in awarding maintenance. It has also been submitted that the trial Court has misread the evidence and has not properly understood the provisions of Sec.125 of the Cr.P.C. Learned counsel submitted that the order of the learned trial Court suffers from serious infirmity inasmuch as the application for interim maintenance has been allowed from the date of application whereas the trial Court was required to consider the factum that petitioner was only a student and was not having sufficient source of income, therefore, under the circumstances the trial Court ought to have given reasons why the maintenance was allowed from the date of filing the application and why it was not considered from the date of passing of the order. In support of his submissions, the learned counsel has placed reliance on Shantilal Vs. Smt. Sushila (2006 (1) Cr.L.R. (Raj. 285), Mohammed Sharif Vs. Jahida (2005 (8) RDD 3041 (Raj.), Qamruddin Vs. Srimati Rashida (1992 (1) WLC (Raj.)305 (DB), and Narendra Kumar Jain Vs. Smt. Manzula & Ors. (1993 Cr.L.R. (Raj.)402 (DB) .

On the other hand, learned counsel for the respondents submitted that interim maintenance to the wife at the rate of Rs.2000/- and to the child Rs.1,000/- per month cannot be said to be excessive. It has further been submitted that learned trial Court while deciding Issue No.1 & 2 has properly appreciated the evidence and the order passed by the learned trial Court suffers from no illegality which may require interference by this Court. It has also been submitted that the petitioner is M.A., LL.B and his father is having lot of property. It is submitted that the trial Court has discussed the evidence in detail, therefore, the order passed by the learned trial Court requires no interference by this Court under its revisional jurisdiction. The learned counsel for the respondents also submitted that under the provisions of Sec.125 of the Cr.P.C., the Court is competent to award maintenance either from the date of order or from the date of submitting application for the reason that the maintenance is allowed when cause of action arises. Learned counsel placed reliance on Devji Vs. Smt. Mani (1998 (1) RLW (Raj.) 145, Gayatri Vs. Om Prakash (2006(1) 264), Ajay Vs. Smt. Shuila (2005 (1)

Cr.L.R. [Raj.) 362, and Rashid Nazfi Vs. Shahin Gulab (2005 Cr.L.J. 4290).

AUTHORITIES CITED ON BEHALF OF PETITIONER:

In the case of Shantilal (supra), this Court, while considering an argument that two Courts below did not assign reason for grant of maintenance from the date of application, placing reliance on a decision of this Court in the case of Mohd. Sharif Vs. Jahida (2006 (1) Cr.L.R. (Raj.) 285 has modified the order to the extent that interim maintenance was liable to be given effect from the date of order and not from the date of moving application under Sec.125 of the Cr.P.C.

In the case of Mohd. Sharif (supra), this Court has observed that Sec.125(2) of the Cr.P.C. provides that the maintenance allowance under this Section is to be paid from the date of the order or if so ordered from the date of application but as the Courts below did not assign reasons why maintenance was awarded from the date of application, therefore, the order passed by the Courts below was modified.

In the case of Qamruddin (supra), this Court has observed that normally the amount of maintenance is paid from the date of order and not from the date of application unless the reasons are recorded.

In the case of Narendra Kumar Jain (supra), this Court has observed that since the petitioner was an ordinary clerk and low paid employee, therefore, maintenance allowance was required to be granted from the date of order.

In the case of Mohanlal (supra), in the absence of proper finding in relation to interim maintenance awarded, the order awarding interim maintenance was modified at the lower side.

AUTHORITIES CITED ON BEHALF OF RESPONDENTS:

In the case of Devji (supra), it has been observed that reasons are necessary for awarding maintenance from the date of application.

In the case of Gayatri (supra), this Court has observed that there is diversion of opinion on the point that as to whether maintenance is to be granted from the date of application or from the date of order. The Court, taking into consideration, the peculiar facts and circumstances of the case that the petitioner in the case re-married, therefore, in the interest of justice ordered maintenance from the date of application.

In the case of Ajay (supra), the Court has observed that if the Court comes to the conclusion that wife was subjected to cruelty on account of demand of dowry etc. and was assaulted, the factum of neglecting the wife makes her entitle to claim maintenance on proving that she has no means to maintain herself.

In the case of Rashid Nazfi Najfi (supra), High Court of Patna repelled the plea of the husband that wife was divorced in the absence of material on record to prove the same.

I have carefully considered the principles laid down in the above authorities cited on behalf of both side.

It is to be seen that Sec.125 of the Cr.P.C. when read as a whole, then it would appear that it is the discretion of the Court to pass orders of maintenance either from the date of application or from the date of order. The authorities which have been cited, unambiguously propound that if the maintenance allowance is to be awarded from the date of filing application then reasons are required to be assigned.

In the instant case, a perusal of the order passed by the learned trial Court does not assign reasons as to why the maintenance was allowed from the date of moving application. Thus, this part of the order requires to be modified. As regards other contentions of the learned counsel for the petitioner that the present case is lacking evidence in relation to financial condition of the petitioner and the interim maintenance awarded is on the excessive side are concerned, I do not find any substance in the

arguments of the learned counsel for the reason that the learned trial Court while deciding Issue No.1 & 2 has taken into consideration the evidence led by the parties and the trial Court has stated at Page 3 of the judgment that in view of the evidence led before it, it was revealed that the non-petitioner respondent wife was having no source to maintain herself and the child whereas petitioner and his father both have sufficient means. The argument of the learned counsel that petitioner was only a student and subsequently did LL.B., therefore, the petitioner was not in a position to maintain his wife and child, is also of no substance.

It is further to be seen that in the instant case it is not denied that there was a legal and valid marriage between the parties and a child borne out of the wedlock. Thus, to say that the petitioner is not having sufficient means to maintain the wife and child, in my humble opinion, will not exonerate the petitioner from the liability to maintain his wife and child. The trial Court has given cogent reasons for awarding maintenance. It is also a matter of common knowledge that nowadays if two persons are to be maintained then a sum of Rs.3,000/- awarded as

interim maintenance cannot be said to be in any manner excessive. The law which has emerged on the point is that if it is borne out from the evidence led by the parties that wife has been neglected then she can claim maintenance and in the instant case though the pleadings of the parties disclose that some allegations were leveled against non-petitioner wife regarding her character but that is no excuse for the husband to maintain her. Be as it may, the trial Court while deciding issue No.1 & 2 has found that non-petitioner is not employed anywhere and she has no means to maintain herself and she is being neglected, therefore, considering the means available with the petitioner for maintaining his wife and children found that non-petitioners were entitled to seek maintenance at the rate of Rs.2,000/- to the wife and Rs.1,000/- to the child. The findings so recorded, in my humble opinion, do not call for any interference by this Court in revisional jurisdiction. However, in view of provisions contained in Sec.125 of the Cr.P.C. and the authorities which have been cited before me, the trial Court is required to assign reasons in the order of maintenance in case the maintenance is awarded from the date of application. In the present case, the trial

Court has not stated the reasons as to why the maintenance was awarded from the date of application.

In the above circumstances, the revision petition deserves to be partly accepted and the impugned order is required to be modified to the extent that non-petitioners shall be entitled to claim maintenance from the date of order and not from the date of application filed under Sec.125 of the Cr.P.C.

In the result, the revision petition is party allowed as indicated above. The impugned order stands modified accordingly.

(SATYA PRAKASH PATHAK) J.

/jpa